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DIRECTIVE #03-23
(Supersedes Directive #17-17)

**To: Assignment Judges
Trial Court Administrators**

From: Glenn A. Grant, Administrative Director

[Questions may be directed to
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**Subj: Family – Court Policies on Termination of Parental Rights and
Adoption Matters**

Date: February 28, 2023

This directive supersedes Directive #17-17, “Family-Court Policies on Termination of Parental Rights and Adoption Matters,” and is issued to provide guidance on adoption cases. As approved by the Judicial Council, this superseding directive includes the following changes from the prior version: (a) a revised requirement to obtain a child’s birth certificate and Social Security card earlier in removal matters; (b) a new section to address the process for co-parent adoptions; and (c) updated website resources for background checks in stepparent adoptions. These changes are intended to improve the outcomes for children who have been placed for adoption by the Division of Child Protection and Permanency (DCP&P) in the Department of Children and Families, by an approved agency, or by a private party. The provisions complement Court Rules 5:10, 5:10A, and 5:11.

A. Division of Child Protection & Permanency (DCP&P) Matters

One of the overriding principles to ensure an efficient adoption process is to address issues well before an adoption complaint is filed. In DCP&P cases, this work can be completed as early as the child abuse or neglect (FN docket) litigation. Unless otherwise specified, the completion of the steps listed in this section will be verified by a judge who is managing the FN, FG, or child placement review (FC docket) case.

1. Obtaining the child's birth certificate and Social Security card during the child protection proceeding (FN docket)

In a removal case, DCP&P is required to provide concurrent planning for the child's permanency. This means that although reunifying the family is the primary goal, DCP&P must also concurrently plan for other permanency options, such as adoption. Part of the concurrent planning for adoption includes obtaining a copy of the child's birth certificate and Social Security card. Therefore, at the Return of the Order to Show Cause in the child protection matter (FN docket), the court will order DCP&P to provide the court with a copy of the child's birth certificate and Social Security card. The earlier provision of these documents will ensure that an adoption is not delayed for lack of this documentation when an adoption is ready to be finalized. The court also will confirm that the child's birth certificate and Social Security card have been submitted before entering a judgment terminating parental rights (FG docket).

2. Ordering DCP&P to proceed with adoption consent

After the court has granted termination of parental rights (TPR), DCP&P must make reasonable efforts to finalize the adoption. Failure to obtain a physical Social Security card for the child should not be considered a barrier to DCP&P's signing the consent to adopt the child. In those cases in which the Social Security card has not yet been obtained, if a child has a valid Social Security number and birth certificate, the court will order DCP&P to sign and forward its adoption consent to the attorney retained to represent the resource parents for the adoption. Provided that there are no other barriers to finalizing the adoption, DCP&P must finalize consent for the adoption and forward it to the attorney. The court should order DCP&P to advise the court of the date that it provided the consent to the attorney.

3. Confirming that DCP&P has conducted name checks prior to sending adoption consent

DCP&P should run its last child abuse record information (CARI) check and other name checks (Promis/Gavel, domestic violence central registry (DVCR), and the municipal court Automated Complaint System (ACS)) no later than 90 days before sending the consent package to the adoption attorney. This time frame is to ensure that there is sufficient time prior to the adoption hearing for DCP&P to address any issues that these searches may reveal. The CIC Document Search Engine, the application that facilitates name checks of Judiciary Systems

(Promis/Gavel, DVCR, ACS), has been implemented in all DCP&P offices (LOs). If those checks indicate any history of DCP&P or court involvement, the court will order DCP&P to address those issues before the adoption hearing.

4. Ordering DCP&P to provide the court with a copy of its transmittal letter to the adoption attorney

When DCP&P sends its consent to adopt to the attorney retained to represent the resource parents for the adoption, DCP&P attaches a letter of transmittal to the consent. Typically, that letter, the consent, and all necessary documentation are sent to the adoption attorney immediately, but no later than 48 hours, after the LO manager signs the consent. To track the children who have been legally freed for adoption, the court will order DCP&P to file a copy of the transmittal letter with the court. DCP&P's submission also must include the date that DCP&P mailed the consent to the adoption attorney. Upon receipt of the letter, court staff will place that document in the court file tracking the child's DCP&P placement (FC docket case file). The judge will address the matter if the letter is not in the file at the next review.

5. Ordering DCP&P to provide adoption consent packet to the adoption attorney

In post-termination of parental rights cases where there is still an open child placement case under the FC docket, the court has the authority to compel DCP&P to ensure finalization of the adoption. As such, the court will continue to monitor the case for documents that DCP&P is to provide to the adoption attorney that will be essential to filing the adoption complaint. Therefore, at the court's first review after it has terminated parental rights under the FG docket, the court will order DCP&P to complete and send its consent package to the adoption attorney. The court's order will provide that the DCP&P adoption consent package transmitted to the adoption attorney must contain, at a minimum, the following: all relevant documents set forth in R. 5:10-3, the agency report (also known as the court report), the Judgment of Guardianship (termination of parental rights judgment or a surrender and supporting documentation), the adoption agency background checklist and certification required pursuant to R. 5:10-8 (CN 11514 [Adoption Agency Background Checklist and Certification \(njcourts.gov\)](https://www.njcourts.gov)), the results of the state and federal fingerprint check (valid one year from filing the adoption complaint), DCP&P waivers (if applicable) and criminal history waivers (if applicable), appeal status if the child is legally free for adoption pursuant to a

guardianship judgment entered under the FG docket (DCP&P TPR case), attorney transmittal letter, and long form birth certificate.

6. Ordering DCP&P to include in its court report documentation of any domestic violence history of adoptive parents or other adults in the adoptive home; DCP&P to inform court that it has investigated and addressed any DV matters

When DCP&P in its background checks finds allegations or a history of domestic violence (DV) involving the adoptive parents or other adults in the adoptive home, the results should be noted in DCP&P's court report. If the court discovers that DCP&P has not noted this information in its court report, the court will order DCP&P to amend the court report. N.J.S.A. 2C:25-34 provides for DCP&P's access to the DVCR to conduct the searches. DCP&P employees must receive training on how to use the DVCR before they are provided access to the DVCR. If there had been allegations or a history of DV involving the adoptive parents or other adults in the adoptive home, DCP&P should advise the court in writing that it has investigated and addressed these matters. This information may be provided to the court in the agency report, in a separate letter, or through testimony in a hearing. The information and resolution should be in the court report that is provided in the consent packet. If the court is not satisfied with DCP&P's documentation regarding those issues, the court will order DCP&P to provide a more complete response. Court staff may then locate and provide the court file to the judge for a determination as to whether adoption is in the best interest of the child considering the DV histories.

7. Obtaining backup documentation for fingerprint background checks

DCP&P should retain all background fingerprint check printouts (i.e., backup documentation that includes State Bureau of Identification (SBI) and Federal Bureau of Investigation (FBI) documentation) and other name checks relating to the adoptive parents and other adults in the adoptive home. That documentation should be made available to the court upon request. The checks include NJSpirit (DCP&P's case management system) and the federal and state criminal history record information (CHRI) checks. Name checks include Promis/Gavel, DVCR and ACS.

The SBI and FBI numbers, if they exist, also should be provided to ensure that the background checks match the individuals. Name checks may be conducted several days before an adoption, and any results will be checked against the

records that DCP&P discovered. This information will be confirmed by DCP&P in its certification to the court pursuant to R. 5:10-3. If the backup documentation is not filed, the court may order DCP&P to provide that information.

8. Obtaining child abuse record information (CARI) checks in other states

Pursuant to N.J.S.A. 30:4C:27.7, DCP&P must request CARI checks of other states where the adoptive parents and other adult household members resided within five years preceding DCP&P's receipt of written consent from those individuals to conduct the checks. The court will determine whether DCP&P has made the requests, if necessary. If DCP&P has not done so, the court will order DCP&P to make those requests.

9. Receiving background checks results and clear explanation of those results

The DCF Policy Manual, Volume IV, Chapter C, Subchapter 10 requires DCP&P to conduct CHRI checks and decide whether the results merit disqualification of the adoptive parent(s). It is important for DCP&P to staff each LO with an individual who can analyze the background check results to provide the court with meaningful information regarding those results. Also, as noted above, the CIC Document Search Engine facilitates the searches of the Judiciary's criminal, DVCR, and municipal systems. DCP&P has access to the CIC Document Search Engine.

10. Obtaining DCP&P's form that documents the child's medical history

DCP&P adopted a standardized medical form (DCP&P Form 11-70, Pediatric Nursing Report) on May 9, 2011. That form is completed by the DCP&P Child Health Unit nurse to document all encounters with children and their resource home providers, and to update DCP&P on the medical/mental health progress of the children in out-of-home placement. The form is to be used at the initial visit or contact and can be used at follow-up visits and telephone contacts with the resource care provider as well. DCP&P's nurse managers will review the information on the form and actively manage the cases to ensure that required medical tests are conducted and are not duplicated unnecessarily. The court will order DCP&P to provide the court, within 90 days of the entry of a TPR order,

with a completed copy of DCP&P Form 11-70 for review to ensure that a child's medical history and vaccinations are up to date.

11. Obtaining medical histories of the biological parents

The medical histories of the biological parents are set forth in DCP&P Form 14-177, Family Medical History. This history should be obtained at the beginning of the child abuse or neglect (FN docket) litigation. The court will confirm whether DCP&P has completed this form. If DCP&P has not completed the form, the court will order DCP&P to do so and to keep it updated throughout the child's placement until the adoption is finalized.

12. Conducting a Municipal Court records Automated Criminal System (ACS) search

At the time of the child's placement, mandatory searches on ACS should be conducted on the resource parents and other adults in the household. This search should capture disorderly persons, petty disorderly persons, and other offenses that do not appear in Promis/Gavel. The search is particularly important because, pursuant to N.J.S.A. 30:4C-26.8, certain offenses (e.g., simple assault) would disqualify a person from adopting a child, and that information may be available only in the Municipal Court records. Additionally, these searches would reveal other prior conduct that may be of concern to the court when deciding whether a resource parent's home is the appropriate permanent placement for the child. The search of Municipal Court records should be done early in the process. The information regarding the Municipal Court records search should be on the background checklist form. In DCP&P cases, the final name check in ACS should be done at least 90 days before DCP&P submits its consent package to the adoption attorney so that there is enough time before the adoption hearing to address any problems these searches may reveal. DCP&P now has access to ACS, which is accessible through the CIC Document Search Engine, and conducts searches using that application.

B. Other Adoption Policies

1. Affidavit of Adoption not necessary

The Affidavit of Adoption is unnecessary and there is no legal requirement to file this affidavit. It therefore should not be required for filing the adoption complaint. This affidavit is a document that indicates that the plaintiff has not

been convicted of any crimes. An approved adoption agency or the adoptive parent must obtain this information through the standard procedures of fingerprint background checks, which are verifiable and more reliable than an affidavit.

2. Stepparent or same-sex partner adoptions – background checks may be performed before or after complaint filing

County Surrogates may refer stepparents or same-sex partners (who are not listed on the birth certificate) to licensed adoption agencies to obtain the fingerprint checks of the plaintiff and other adults in the adoptive home to ensure that the results are properly interpreted for the court. It has been reported that fingerprint checks may be filed either with the complaint or afterwards without any significant impact on case processing time. For situations where same-sex partners' names are listed on the birth certificate see paragraph (B)(9) below.

Plaintiffs may continue to obtain and file those fingerprint results with the complaint. However, in those cases where the fingerprint results are not filed with the complaint, immediately after the complaint is filed the court will include on the order setting the hearing date a provision that orders the fingerprint checks. The child's biological custodial parent is not required to undergo fingerprint checks. Fingerprint checks must be filed with the court at least ten business days before a preliminary hearing, pursuant to R. 5:10-5(a).

3. Agency investigations in stepparent adoptions

In all stepparent adoptions, the court should review three separate information checks: the CHRI checks, the DCP&P system name checks, and the DCVR checks. All three of those checks must be performed on each adoptive applicant and on all persons residing in the adoptive applicant's home who are 18 years of age and older. Stepparents seeking to adopt their stepchildren must follow the procedures established by the New Jersey State Police (NJSP) (See <https://nj.gov/njsp/criminal-history-records/>) and the FBI (See <https://www.fbi.gov/services/cjis/identity-history-summary-checks>) for obtaining criminal history background checks of all adult members in the household.

All CHRI checks must be dated 12 months or less before the filing date of the adoption complaint and must be submitted by the stepparent with the adoption complaint. Upon the stepparent's filing of the adoption complaint, the County Surrogate either will conduct the required DV registry checks and DCP&P system name checks or will provide a copy of the complaint to the court to enable court

staff to perform these two checks. The judge will consider the results of the CHRI check, the DCP&P name check, and the DVCR check in determining whether to order or waive an agency investigation. If those checks reveal any criminal activity, child abuse, or domestic violence, the judge must be so advised immediately and may order a full or limited agency investigation and report. The investigation and report will include CARI background checks.

N.J.S.A. 9:3-48(a)(4) (“Action on Complaint for Adoption: Child Not Received from Approved Agency”) states in pertinent part:

Whenever the plaintiff is a stepparent of the child, the court, in its discretion, may dispense with the agency investigation and report and take direct evidence at the preliminary hearing of the facts and circumstances surrounding the filing of the complaint for adoption.

Dispensing with the agency investigation altogether in stepparent adoptions may put children at risk. Applying a narrow interpretation of that statute by requiring an agency investigation in all cases would provide children in stepparent adoptions with the highest level of protection, but at the cost of a slower adoption process and potentially impeding stepparents from adopting children. However, by using CHRI checks, DCP&P system name checks, and DVCR checks to screen a case before ordering an agency investigation and report, a significant level of protection is provided to the adoptive child without causing excessive delay. This approach should provide protection for children without creating an undue burden on the adoption process. This policy should not be read as limiting a court from ordering a full investigation at any time in the process, regardless of the results of the checks, if the court determines that a full investigation is warranted.

4. Terminating child support

If the court grants an adoption, court staff will determine whether the child was the subject of a child support order. If the child was the subject of a child support order, court staff will so advise the court, and the judge must enter a separate order vacating the child support obligation but not any outstanding child support arrears. Any arrears must be set and reduced to judgment effective as of the date of adoption. Court staff should then forward a copy of the order vacating child support to the child support obligor, and, if applicable to the Probation Division.

The adoption may relate to a child who is the subject of a child support order affecting other children. In this situation the parties in the child support case may file an application to recalculate child support for those remaining children. This would be processed in accordance with Judiciary policy and procedures.

5. Judiciary's adoption case management system

Pursuant to R. 5:10A, “[a]ll adoptions shall be recorded using the Judiciary [adoption] case management system, as prescribed by the Administrative Director of the Courts. Every Surrogate shall use the system to establish, manage and dispose of all adoptions.” The Judiciary has developed and implemented an adoption case management system. The index of adoptions required pursuant to N.J.S.A. 9:3-51 will be maintained within the Judiciary’s adoption case management system.

6. Timing of background checks in all adoptions

Pursuant to N.J.S.A. 9:3-37, the adoption statute “shall be liberally construed to the end that the best interests of children be promoted and that the safety of the children be of paramount concern.” This statute provides the courts with broad powers to promote the interests and safety of the children who might be adopted in New Jersey. N.J.A.C. 10:121A-5.6(m) provides that CHRI checks are valid for 12 months from the date the results are received by the agency. In order to provide maximum protection to adoptive children, the CHRI and CARI checks must be as current as possible in all adoptions. Accordingly, it shall be Judiciary policy that CHRI checks in adoptions, whether part of the agency’s home study services in an agency adoption or in a private adoption, must be dated 12 months or less before the filing date of the adoption complaint.

In a private adoption through an approved adoption agency or in an adoption through DCP&P, the agency must have conducted the CHRI and CARI checks 12 months or less before the filing date of the adoption complaint. Upon the filing of the adoption complaint, court staff will conduct the DVCR check pursuant to N.J.S.A. 9:3-47(b). In a private adoption not through an approved adoption agency (exclusive of stepparent adoptions), after the filing of the adoption complaint, the court shall appoint an approved adoption agency to conduct an investigation and prepare a report, which shall include the CHRI and CARI checks. Court staff will conduct the DVCR check pursuant to N.J.S.A. 9:3-48(a)(5).

As to a relative adoption (that is, where the plaintiff is a brother, sister, grandparent, aunt, uncle, or birth father of the child), the statute provides for a limited investigation, described as “an inquiry concerning the status of the parents of the child and an evaluation of the plaintiff.” N.J.S.A. 9:3-48(a)(4). Such investigation should include, but not be limited to, a CHRI check, a CARI check and a DVCR check on the relative.

Additionally, Family staff and Surrogate staff (depending on which office has case management responsibility for adoptions in a particular county), at the time of filing of the adoption complaint (whether it originated from DCP&P or is from a private party), shall use available automated systems to conduct a name check of the DVCR, and updated name checks of the Promis/Gavel and DCP&P system (child abuse) databases. If these searches reveal any recent criminal activity, child abuse, or domestic violence, the judge must be so advised immediately. Further, at the time of the adoption hearing, staff shall again conduct the criminal name check (using Promis/Gavel). At the judge’s discretion, staff may conduct the DVCR check and the child abuse check.

7. Foreign adoptions

A judgment of adoption entered in a country other than the United States will not require a complaint to be filed in New Jersey provided that the adopting parent is a resident of New Jersey, and the Bureau of United States Citizenship and Immigration Services has verified the adoption by granting an IR-3 immigrant visa. N.J.S.A. 9:3-43.1.

8. Domestic partnerships

For purposes of this directive, domestic partners as defined in N.J.S.A. 26:8A-1 et seq., are treated the same as stepparents.

9. Co-parent adoptions

Effective April 1, 2020, L. 2019, c. 323 authorized a process to obtain a judgment of adoption for civil union partners or spouses of natural or legal parents of a child when those persons are named as parents on the child’s birth certificate in lieu of pursuing a confirmatory adoption. Pursuant to this law, a natural or legal parent and the current or former spouse or partner in a civil union of the natural or legal parent must jointly file a complaint with the court in the county of residence of the spouses, civil union partners, or one of the parties to the action. The

Supreme Court adopted R. 5:10-17, effective September 1, 2021, to conform the Court Rules to the statute by incorporating the requirements for filing a co-parent adoption complaint.

The following shall be attached to the co-parent adoption complaint:

1. Proof of a valid civil union or marriage between the individuals issued prior to the birth of the child;
2. An original birth certificate issued by the State Registrar of Vital Statistics that lists both individuals as parents of the child; and
3. A written declaration signed by both individuals that describes in sufficient detail how the child was conceived and identifies any other involved parties so that the court may determine whether those individuals may have parental rights to the child.

The new law also provides the following:

1. A process for holding a hearing to determine the best interests of the child, if appropriate;
2. No home study or background check is required for the adoptive parents;
3. A termination of parental rights in these actions is not necessary because the adoptive parent's name is already set forth on the birth certificate;
4. If the court determines that the parental rights of any other interested individuals have been relinquished or terminated, the court shall issue a judgment of adoption confirming both parties as the legal parents of the child, without the need for an appearance by the parties;
5. If the court determines that another individual may have existing parental rights to the child, the court shall order and conduct a hearing on the matter, providing all parties with notice, before issuing a judgment of adoption;
6. After the judgment of adoption is issued, the parties are considered “co-parents” of the child as defined by this new law; and
7. The law does not summarily extinguish or terminate the parental rights of any individual nor confer parental rights through a birth certificate.

As no home study or background check is required, prospective parents shall not be required to provide their Social security numbers when filing a co-parent adoption complaint.

10. Post-adoption responsibilities

Pursuant to N.J.S.A. 9:3-52, the County Surrogate, acting as the clerk of the court, is responsible for forwarding adoption information to the New Jersey Office of Vital Statistics and Registry, including:

1. Date of entry of judgment;
2. Name of the adopting parent or parents;
3. Name of the child;
4. Date and place of birth of child; and
5. New name of child if changed by the judgment of adoption.

C. Rules of Court relating to adoption matters

The Supreme Court adopted Rules of Court specifically relating to adoption matters. See Rules 5:10, 5:10A and 5:11.

D. Policy manuals and other relevant materials

To the extent that any prior Judiciary standard, policy, or other material on this subject is not consistent with the court rules or with the policies set forth herein, such inconsistent standard, policy, or other material is superseded.

cc: Chief Justice Stuart Rabner
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